THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 14461 of 2005

Date: 28 .09.2005

Between:

1)Sri Sai Minidor Association (Regd. No.2960),
Dilsukh Nagar, Vidya Nagar, Hyderabad, rep.
By its General Secretary S.K.Yadul, s/o.Shaik
Habeeb, 1-9-27/F234, Nagaiahkunta, Hyderabad
& 7 others

…Petitioners

and

1) The Government of Andhra Pradesh, rep. by
its Principal Secretary, Home Department,
Secretariat buildings, Saifabad, Hyderabad
& 2 others

…Respondents

ORDER:

1. Heard both sides and at their request, the main Writ Petition itself is

taken up for disposal at the stage of admission.

2 . Challenging the action of the respondents in issuing rules in G.O.Ms. No.100, dated 04.06.2005 as published in gazette on 06.06.2005 including the consequential press notification issued by the third respondent on 07.06.2005 as contrary to law, without jurisdiction and in violation of principles of natural justice and also contrary to the provisions of the Motor Vehicles Act, 1988 and the Hyderabad City Police Act, 1348-F, and also judgment of the judgment of this Court reported in 2001(3) ALT 718 (D.B.), the present Writ Petition is filed.

3. The brief facts which are necessary for disposal of this Writ Petition are as follows:

The petitioners are various associations of owners and drivers of autos, including 7-seater autos. It is stated that drivers/owners of 7-seater autos constitute large number of unemployed youth, who raised finances from public financial institutions; that in view of skyrocketing prices of petroleum products, group travelling has to be encouraged; that as per the provisions of the Motor Vehicles Act, 1988, which governs the use, grant of permits, control, etc. of the vehicles, the 7-seater autos are contract carriages; that as per Section 74 of the Act, the Transport Authority grants permits in a specified area or on a specified route or routes and in the absence of such prescription, it is to be assumed that the permit to carry is a permit to carry anywhere; that the Motor Vehicles Act is a self-contained statute dealing with all contingencies arising out of and in connection with the plying of motor vehicles, private or public, on the roads of the State. It is stated that the respondents issued impugned G.O. in exercise of powers under Section 21 of the Hyderabad City Police Act, purportedly to facilitate smooth flow of traffic on main roads of the city; that it is a blanket ban on the use of a kind of vehicles within the twin cities of Hyderabad and Secunderabad which

is impermissible under the Hyderabad City Police Act and affects the livelihood of persons and their families depending on the autos; that as per Section 21 of the Hyderabad City Police Act, the second respondent is competent authority to issue rules, whereas the impugned rules were issued by the first respondent in the name of the second respondent exercising the power under the said Section; that it is in violation of Article 19(1)(g) of the Constitution of India; the impugned order is contrary to verdict of this Court reported in 2001(3) ALT 718; hence, the Writ Petition.

4 . The second respondent filed counter affidavit denying the averments in the petition and stating that the 7-seater autos, operating as stage carriers, are being parked on arterial roads to board commuters, causing serious traffic congestions at various junctions and nerve points of the twin cities; that the autos are overloaded with 10 to 15 passengers and carrying passengers on the side of the driver, resulting in many accidents involving loss of human lives; that there is every necessity to regulate the flow of traffic in public interest and prevent accidents; that when a challenge was made in W.P. No.4557 of 2005 to the notification issued earlier by the respondents, a Division Bench of this Court disposed of the above petitions on 09.04.2005 giving liberty to the respondents to frame fresh rules in accordance with law for better management of traffic; the G.O. under challenge is strictly in accordance with the law; it has become imminent to issue the impugned notification and the second respondent has power to frame rules to regulate the traffic; hence, the Writ Petition is liable to be dismissed.

5. Learned counsel for the petitioners contended that the impugned G.O. Ms. No.100, dated 04.06.2005 issuing certain rules prohibiting entry of 7-seater autos up to certain points in the twin cities is without jurisdiction; that the Government, being the appellate authority, has no jurisdiction to issue the rules; the members of the petitioner-

society were having valid permits to ply the vehicles within a radius of 60 KMs; that expression of certain places in the rules is not valid in the eye of law; that the issue is covered by the judgment of a Division Bench of this Court; that the Commissioner of Police has no power to prohibit plying of autos; that the places the prohibition is imposed are the same places which fell for determination by this Court earlier; that the said G.O. is without application of mind; that by imposing such a restriction prohibiting entry of 7-seater autos within the city limits affects the livelihood of the members of the petitioners-associations since they procured the autos by taking loans, and it also causes lot of inconvenience to the public; that the termination points at the places mentioned in the rules are nothing but a total prohibition and therefore, he prays to allow the Writ Petition.

6 . The special Government Pleader for Home appearing for the respondents contended that with a view to regulate the traffic, the restrictions have been imposed; that for plying the vehicles, necessarily the places up to which they have to ply has to be specified; the Commissioner of Police has no power to publish the rules in the Gazette and the authority therefor is only the Government; the issue involved in the earlier case has no relevance or bearing on the present case; that it is not a complete prohibition on plying the autos; that to regulate the traffic, the Police identified certain routes and imposed the ban; that the circumstances prevailed at the time of the earlier decision rendered by this Court can not be taken as a ground for the purpose of determining the issue in this Writ Petition; that the Government has power to publish the rules in the Gazette and therefore, he prayed to dismiss the Writ Petition.

7 . G.O. Ms. No. 100 Home (PSC), dated 04.06.2005 was issued prescribing certain restrictions on plying of 7-seater autos in twin cities of Hyderabad and Secunderabad, wherein the following Rules were framed.

> “1) The 7-Seater autos coming from Dilsukhnagar up to Moosarambagh will now be terminated at Traffic light signal,

Dilsukhnagar.

2) The 7-Seater autos coming from Champapet up to Chanchalguda rotary will now be terminated at Indira Seva Sadan Junction.

3) The 7-Seater autos coming towards Charminar up to Himmatpura will now be terminated at MBNR 'X' Roads.

4) The 7-Seater autos coming on Kurnool road via Bahadurpura up to Puranapul will be now terminated at Tadbun 'X' Roads.

5) The 7-Seater autos coming from Rajendra Nagar will now be terminated at Retibowli.

6) The 7-Seater autos coming from Uppal towards Nimboliadda junction will now be terminated at Ramanthapur T.V. Studio.

7) The 7-Seater autos will not be allowed to ply between Habsiguda and Mettuguda.

8) The 7-Seater autos coming from Barkas road will now be terminated at Mahboob Nagar 'X' Roads.

9) The 7-Seater autos coming from Medchal side on NH-7 will now be terminated at Bowenpally Checkpost.

10) The 7-Seater autos coming from Karimnagar side on Rajiv Rahadari road towards Tirumalagherry will now be terminated at Rythu Bazar, Alwal.

11) The 7-Seater autos coming from Kukatpally towards Ameerpet will now be terminated at E.S.I. Hospital junction.

12)The Seven seater autos coming from Lunger Houz towards Goshamahal via Guddimalkapur, Asifnagar and Seetarambagh will now be terminated at Guddimalkapur.

13)The Seven seater autos plying from Ramnagar road towards Koti via Azamabad, VST, RTC Kalyanamandapam, Baghlingampally, Crown café, Barkatpura post office, Narayanaguda L&O PS, Narayanaguda 'X' road YMCA Sultanbazar and DMHS will not be allowed.

14)The Seven seater autos coming from Rajendranagar towards Puranapul will now be terminated at Kishanbagh 'X' roads."

8. The aforesaid Rules were published in the official Gazette of Government of Andhra Pradesh on 06.06.2005. The reasons for

imposing such restrictions are the 7-seater autos by virtue more of carriageway, obstruct the free vehicular movement on the roads and these autos part/halt on the arterial roads to board commuters resulting in serious traffic congestion; they are overloaded with 10 to 15 passengers and also indulge in violations such as sitting on the side of the driver, causing serious obstruction for steering the vehicles resulting in accidents involving loss of human lives; out of 3,427 accidents occurred in the year 2003, 76 accidents were by virtue of involvement of 7-seater autos resulting in 6 deaths and injuries to 77 persons; out of 3,525 accidents occurred in the year 2004, 65 accidents were by virtue of involvement of 7-seater autos resulting in 5 deaths and injuries to 69 persons; and 42,258 cases were registered against 7-seater autos during the year 2005 under the Motor Vehicles Act. Therefore, in exercise of powers conferred under Clause(b) of Sub-Section (1) of Section 21 read with Sub-Section (2) of Section 21 of the Hyderabad City Police Act, 1348 F (for short, 'the Police Act'), the Commissioner of Police, Hyderabad with previous sanction of the Government of Andhra Pradesh, notified the Rules imposing restrictions on the movement of 7-seater autos with effect from the publication of the notification in extraordinary issue of A.P.Gazette.

9. Section 21(1) reads as under:

> "The Commissioner of City Police, Hyderabad, may, from time to time, make rules not inconsistent with this Act in respect of the following. Such rules shall, in cases of clauses (b) and (c), be subject to the control of the Government and with regard to be remaining clauses, sanction of the Government shall be obtained prior to the enforcement of the rules."

Section 21(b) reads as under:

> "Regulating traffic of all kinds in public street or public places and regulate use of streets and public places by persons

walking, driving, cycling or accompanying or leading cattle, with a view to prevent danger, inconvenience or obstruction to the public."

Section 21(1)(b) of the Police Act confers power on the Commissioner of Police, Hyderabad to regulate the traffic of all kinds in public street or public places. In this case, the Commissioner of Police exercised power under the Clause (b) to regulate the traffic in twin cities of Hyderabad and Secunderabad. Under Sub-Section (2), the power to make the rules under Sub-Section (1) shall be subject to the condition of the rules being enforced after publication and they shall be published in the Official Gazette in the manner specified in Section 84. Therefore, a plain reading of the above provisions makes it clear that unless the Rules are published in the Official Gazette in the manner specified in Section 84, they can not be enforced.

10. The learned counsel for the petitioners contended that since the publication has not been made in the Official Gazette in the manner specified in Section 84, the same can not been enforced; since the word 'Section 84' has not been deleted from Sub-Section (2) of Section 21, there is no other mode prescribed; therefore, the same has to be strictly construed.

Section 84 of the Police Act deals with specifying conditions, etc. in licences and permits; suspension, revocation of licence, etc. and production of licence on demand. Therefore, Section 84 does not specify the manner of publishing in the Official Gazette.

11. One of the basic principles of interpretation of statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary to, or inconsistent with, any express intention or declared purpose of the statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. In a decision in *Jugalkishore Sdaraf v.*

Raw Cotton Co. Ltd., it is held as follows:

> "The cardinal rule of construction of statutes is to read the statue literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation."

12. In the case on hand, if the strict interpretation of Sub-Section (2) of Section 21 is given effect, the clause 'Official Gazette shall be published in the manner prescribed in Section 84' would become impracticable in view of the fact that Section 84 deals with another aspect. Since no manner is specified in Section 84, incorporating such a provision would lead to absurdity or inconsistency. In such cases, the grammatical sense can be modified and/or abridged. Therefore, if the said provision is interpreted, it is clear that the Rules have to be published in the Official Gazette. The Official Gazette or Gazette shall mean "The Gazette of India or the Official Gazette" as stated under Section 3(39) of the General Clauses Act, 1987.

The Special Government Pleader relied upon Supreme Court Case Finder, 2005 page 1 on SCC Online, wherein it is stated "Official Gazette" or "Gazette" shall mean the Gazette of India or the Official Gazette of a State. Vide General Clauses Act, 1897, S.3(39)."

13. So, from the above paragraph, it is clear that the Official Gazette is an official document and it is published under the authority of the Government. Therefore, the Government is competent to publish the same. The Commissioner of Police can not get the Rules published in the Official Gazette. He can formulate the rules, but he can not Gazette the same. Hence, the contention of the learned counsel for the petitioners that strict interpretation has to be given to Sub-Section (2) of Section 21 of the Police Act, can not be accepted, and it can be

said that the Government of Andhra Pradesh alone is competent to Gazette any rules or orders.

14. Even though there is no need to take any previous sanction of the Government, but the impugned order shows that a prior sanction from the Government of Andhra Pradesh is taken to notify the Rules. Since the rules have been gazetted in the name of the Principal Secretary to the Government in the A.P. Gazette, the same can not be said to be in violation of any rules or statute.

15. The learned counsel for the petitioners placed strong reliance on the judgment of this Court in *Mini Taxi Owners' and Drivers' Association and others v. State of A.P., Home Department and another*, which has been upheld in the decision reported in 2001(3) ALT 718 (D.B.). The issue that fell for consideration before the learned single Judge was whether the impugned notification dated 15.01.2001 issued by the Commissioner of Police, Hyderabad, is *ultra vires* the powers under Section 21 of the Police Act. The notification dated 15.01.2001 was issued by the Commissioner of Police, Hyderabad under the Police Act, 1348-F prohibiting movement of 7-seater auto rickshaws in the twin cities of Hyderabad and Secunderabad for all 24 hours and they should not enter the city beyond the areas viz. 1) Lunger House; 2)Toli Chowki; 3)Moghal Ka Nala; 4) Tadban (Bangalore Road, NH-7); 5) Raidurg Centre; 6)Chandrayangutta 'X' roads; 7)Rajiv Gandhi Statute, Dilsukh Nagar; 8)Habsiguda 'X' roads; 9)Lothkunta; 10)Erragadda 'X' roads; 11) Old Airport Bowenpally/Bowenpally Check post; 12) Bollaram 'X' roads; and 13) T.V. Station, Ramanthapur.

After considering the various aspects, the learned Single Judge held as follows:

"From the reading of the above provisions of Section 21 (1)(b) of the Act, it is clear that the Commissioner of Police has no power to prohibit the movement of seven seater motor

> cabs within the twin cities of Hyderabad and Secunderabad, but he has the power only to regulate the traffic of all kinds of motor vehicles in public street or public places and regulating the use of streets and public places by persons walking, driving, cycling or accompanying or leading cattle, with a view to prevent danger, inconvenience or obstruction to the public. It is for the Government of Andhra Pradesh and A.P. Transport Authority constituted by the Government to take appropriate action to prevent, suspend or cancel movement of transport vehicles and the permits granted to the Transport vehicles and the Commissioner of Police has no power or any manner of jurisdiction to prohibit the movement of the vehicles in the twin cities of Hyderabad and Secunderabad."

The said judgment was upheld by a Division Bench of this Court as reported in 2001(3) ALT 718 (D.B.). The two contentions raised in the appeal are, (1) whether regulation of traffic of all kinds would include prohibition ? (2) whether for the purpose of examining the constitutionality of the impugned notification, this Court, exercising the power of judicial review under Article 226 of the Constitution of India, can look into the reasons therefor ?.

The Division Bench held as follows:

> "By reason of the said notification, a complete prohibition was made, as a result whereof except for certain reasons and certain areas, the vehicles can not enter twin cities at all. The area of the twin cities of Hyderabad and Secunderabad is 168 Sq. Kilo metres. Indisputably, the said vehicles were being used as passenger vehicles throughout the twin cities of Hyderabad and Secunderabad. By reason of the impugned notification dated 15.1.2001, the movement of such vehicles has been totally prohibited for all 24 hours within the twin cities. In the instant case, power could be exercised by the Commissioner of City Police, Hyderabad for regulating the traffic. Although in a sense, regulation of traffic could include prohibition of entry of some type of vehicles in some public streets or some public places, total prohibition of the vehicles from being plied except at some peripheral areas appears to be unreasonable attracting the wrath of Article 14 of the Constitution."

It is further held by the Division Bench that,

> "… having regard to the growing needs of a living city, it is always open to the Commissioner of Police to regulate the traffic. While doing so, it is also permissible for the Commissioner to even prohibit the plying of traffic on selected roads having regard to the main activities that are carried on with reference to the speed of the vehicles. In deed, pedestrianisation of certain areas is one of the devices for controlling the traffic as well as keeping the air pollution levels to the minimum…"

16. Therefore, even the Division Bench also held that the Commissioner has no power to regulate the traffic. So, the issue involved in the earlier case is with regard to the notification issued by the Commissioner of Police imposing total ban on entry of all the 7-seater autos for all 24 hours within the city limits of Hyderabad and Secunderabad. Now, in the impugned Gazette, the rules have been issued restricting the movement of 7-seater autos up to the particular points as mentioned therein at different places. For example, first rule says that the 7-seater autos coming from Dilsukhnagar upto Moosarambagh will now be terminated at Traffic light signal, Dilsukhnagar. So also, the other Rules indicate the termination of those autos at specified places viz. Indira Seva Sadan junction, MBNR 'X' roads, Tadbun 'X' roads, Retibowli, Ramantapur T.V. studio, Mahaboob nagar 'X' roads, Bowenpally check post, Rythu Bazar, Alwal, E.S.I. Hospital junction, Guddimalkapur, Kishanbagh.

Further, the counter affidavit filed by the second respondent would clearly indicate that it has become imminent to issue the impugned notification in order to regulate the traffic. So, there is no total blanket ban on the movement of the 7-seater autos in the impugned notification. They are allowed in between cities in some areas except the routes indicated in the impugned rules.

17. The learned counsel for the petitioners placed strong reliance on the map of Hyderbad and Secunderabad which was based upon permission of Survey General of India and contended that termination points are on the outskirts of the city limits and there is no scope or possibility for the autos to enter into the twin cities and therefore, it is a total prohibition. According to the learned Special Government Pleader, the Commissioner is competent to regulate the traffic under the Police Act, though the petitioners are having a valid permits granted under the Motor Vehicles Act.

18. This Court is unable to accept the contention of the learned counsel for the petitioners because it is specifically stated in the counter affidavit filed by the second respondent that the ban is only with regard to certain notified areas to regulate the traffic, but not a total prohibition of the autos in the twin cities of Hyderabad and Secunderabad.

19. The learned counsel for the petitioners contended that the restriction imposed by the second respondent affects the livelihood of the members of the petitioners' associations because all the drivers constitute large number of contingent unemployed youth who raised finances from different financial institutions and to rob the entire contingent of auto drivers of their livelihood in the garb of the regulatory power would affect Articles 19(1) and 21 of the Constitution of India. There can not be any dispute that the petitioners have fundamental right under Article 19(1)(g). But, that right is, however, subject to reasonable restriction under Article 19(6). No doubt, the petitioners were granted permits by the competent authority under the Motor Vehicles Act, whereunder the vehicles can ply in all routes except the prohibited areas in the State of Andhra Pradesh and also within a radius of 60 KMs from the residence of the owner. But, at the same time, the Commissioner of Police has got power to regulate the traffic under Section 21 of the Police Act. Even the petitioners

admitted that under Section 21, the second respondent is the competent authority to issue Rules. But, their contention is that the Rules are issued by the first respondent in the name of the second respondent. The rules were not issued by the first respondent, but the first respondent gazetted in the Official Gazette of the State. The Commissioner of Police framed those rules for the purpose of regulating the traffic and therefore, the rules are completely within the powers conferred under Section 21 of the Police Act.

20. It is further contended by the learned counsel for the petitioners that the said Rules are framed without any application of mind and it is a mechanical process reiterating the earlier notification. As already stated, the second respondent, taking into consideration certain aspects such as obstructing the free vehicular movement, halting of autos on arterial roads resulting in serious traffic congestion, carrying passengers indulging in violation of safety rules and several other aspects, framed the aforesaid rules. This is an objective assessment by the Commissioner to regulate the traffic. As already discussed earlier, it is not a total prohibition of autos for which the commissioner has no authority or jurisdiction. The Commissioner of Police has got the power to regulate the traffic for smooth vehicular movement. For the aforesaid reasons, I am of the considered view that the impugned rules do not suffer from any infirmities so as to call for interference by this Court.

21. The Writ Petition is devoid of merits and is, accordingly, dismissed. No costs.

(K.C.Bhanu, J.)

28.09.2005

DRK